



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL CLEANUP

September 21, 2012

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Reply To: ECL-113

Allan Steckelberg
ARCADIS
630 Plaza Drive, Suite 200
Highlands Ranch, CO 80129

RE: St. Maries Creosote Site – Assessment of Stipulated Penalties

Dear Mr. Steckelberg,

This letter is a follow up to the U.S. Environmental Protection Agency's (EPA) letter dated August 17, 2012, in which EPA informed you that stipulated penalties had accrued between July 31, 2012 and August 16, 2012, the time period when two Draft Pre-Design Reports were due and when Arcadis requested an extension to the due date. As you are aware, EPA had previously extended the July 31, 2012 deadline after Arcadis informed EPA via voicemail that Arcadis would not be meeting an earlier deadline of July 23, 2012. EPA provided an extension although Arcadis had not requested one. In the letter providing the extension, EPA stated that stipulated penalties would accrue if the July 31 deadline was not met.

On July 31, 2012, Arcadis submitted numerous Draft Pre-Design Reports that were due, except for the following three: 1. the Endangered Species Act Biological Assessment; 2. the Clean Water Act (Section 404) Analysis Memo; and 3. the National Historic Preservation Act Analysis. Arcadis did not request an extension but instead stated its rationale for not submitting the draft documents. While EPA subsequently agreed with the rationale provided for the National Historic Preservation Act Analysis, we did not agree with Arcadis' position regarding the other two documents.

With respect to the Endangered Species Act Biological Assessment, Arcadis stated that the requirement for submittal had been addressed by previous submittals and approvals. EPA does not agree that the previous submittals, which covered field sampling activities, address the requirements for the pre-design. Remedial construction activities will have a far greater impact on listed species than the collection of samples. For the sampling activities, EPA's determined that the activities were "not likely to adversely affect" listed species, but for the remedial action, EPA anticipates a "likely to adversely affect" determination, requiring formal consultation. Because input from the U.S. Fish and Wildlife Service may substantially impact the design

and/or the timing of the planned construction, EPA plans to begin the consultation process soon, so that input from the Service can be incorporated into the early stages of the design process.

With respect to the Clean Water Act Section 404(b)(1) Analysis Memo, Arcadis stated that design level data was not available and that the Memo would not be submitted until the Preliminary 30% Design. The purpose of the 404(b)(1) analysis is to analyze potential negative impacts of the project on the river so that those impacts can be minimized through best management practices and through the design itself. EPA's consultation with the U.S. Army Corps of Engineers may produce requirements that constrain the design or the timing or methods of construction. The sooner these constraints are identified, the lower the probability that addressing Clean Water Act concerns will cause re-design costs or delays. EPA intends to begin the consultation with the U.S. Army Corps of Engineers before the 30% Design, so that any significant concerns on the part of the Corps can be identified early in the design phase.

Pursuant to Paragraph 82 of the Consent Decree, stipulated penalties for failure to submit timely reports are \$500 per day for the 1st day through the 7th day, \$1000 per day for the 8th through the 14th day, and \$1500 per day for the 15th through the 30th day. Stipulated penalties per document are calculated as follows:

July 31 – August 6	7 x \$500 =	\$3,500
August 7 – August 13	7 x \$1,000 =	\$7,000
<u>August 14 – August 16</u>	<u>3 x 1,500 =</u>	<u>\$4,500</u>
Total		\$15,000

Because Arcadis failed to submit the Endangered Species Act Biological Assessment and the Clean Water Act (Section 404) Analysis Memo, which were required as part of the Pre-Design Reports by the deadline, the penalties due total \$30,000 (\$15,000 per violation). In its enforcement discretion, the EPA has decided to collect \$15,000 of the penalties.

EPA expects Arcadis to meet the project schedule established in the Statement of Work for the RD/RA and to provide EPA with timely notice when deliverables will be late. The remedial design for the St. Maries project is complex and some schedule delays are expected. EPA has and will continue to grant reasonable schedule extension requests. EPA will also assess stipulated penalties in the future if Arcadis fails to meet deadlines without requesting and obtaining schedule extensions.

Payment in the amount of \$15,000 is due within 30 days of receipt of this letter, per the payment instructions in Paragraph of 87 of the Consent Decree.

Sincerely,

Helen H. Bottcher

Helen Bottcher
Remedial Project Manager

cc: Sandra Raskell, Coeur d'Alene Tribe
Tisha Pagalilauan, Cascadia Law Group for Carney Products
Linda Rockwood, Faegre Baker Daniels LLC for B.J. Carney
Nancy Wolff, City of St. Maries
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